

OFFICE

AND
POWER
OF A

JUDGE in IRELAND:

AND THE
Respective Effects of that Power, in
the Hands of good or bad Men,
considered and explained.

By a FREE CITIZEN.



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T H E

EDITOR'S ADVERTISEMENT.

WHATEVER Exceptions may have heretofore been taken, to certain Papers published in the Name of a **FREE CITIZEN**, (whether justly or no I shall not here enquire) I believe, no one who either does, or wants to know the Constitution of his Country, with respect to the Office and Powers of *Irish Judges*, will be displeased to see them revived and put into the Form of a Pamphlet, which will not be considered in so fugitive a Light, as that of an ordinary News-paper, commonly forgotten with the Day; and I persuade myself none of the present Set of Gentlemen on the Bench will take it ill, to have a Duty explained to the People, they have always discharged as much to their own Credit, as to the Honour of their Master, or the Satisfaction of their Country.

This being presumed, we have only to apologize to the **AUTHOR** of these Papers, for taking upon us, unlicensed, to reprint them; and, instead of two Essays, to present them to the Public in a continued Piece, without making the least other Alteration.

They appear to have been written to serve the Publick, without any other View; and we are not conscious of designing any Offence to the **AUTHOR**, by republishing what he has already made *publici juris*.

Permit us farther to say, that they are sent to Press, without any Privity, or Knowledge whatever, of the Writer of them, to obviate any Suspensions may be entertained, of his giving Instructions for that Purpose, which, we declare, he did not.

T H E
OFFICE and POWER
OF A
JUDGE in IRELAND.

THERE are very few Offices superior in Power or Rank to that of a Judge.

The Trust of an *Irish Judge* becomes, from certain Circumstances, much more considerable, than that of *Judges of our neighbouring Isle*.

For, *Writs of Error*, and *Appeals from Courts of Equity* being appointed to be heard, and to be finally determined at *Westminster*; Persons of mean Circumstances cannot resort thither for Relief, let their Wrongs be ever so great. In such Cases an Appeal indeed is the Subject's Right: But it is a Right impossible to be enjoyed; and then the *Judge's* Decision is both the first and last Remedy.

To help this in Part, and so far to obviate the Inconvenience, *Civil Bills* are appointed by *Statute Law*, with limited Costs, to be brought before *Judges of Assize*, for twenty Pounds; which Sum is fixed by the usual Measure of the Suitor's Traffick, and commonly comprehends the Debts of inferior Persons. This Method of proceeding saves from the Charge and

Hazard of a *Record*; and an *Appeal* being laid before the next going *Judge of Assize*, secures the *poor* Man from being oppressed and overborn by a *rich* Antagonist. Every JUDGE is hereby made a CHANCELLOR, and need not to have a *Jury*, but as other Judges of *Equity*, when the Fact is doubtful to him.

An *Irish Judge* is also appointed to confirm *Presentments of Grand-juries*, for raising Money for sundry Purposes unknown in *England*; and this Power vested in *Grand-juries*, if executed with the Latitude the *Letter* of the Law would admit, might be extremely burthensome and hurtful to the Publick. Here then the Watchfulness and Care of a *Judge* are necessary to keep it within the *Intent* of the Law. He is also to take Care that *Accounts* be rendered of Money so raised; and by a strict and regular Execution of this Power, the former would be sufficiently circumscribed.

Beside these Powers given to an *Irish Judge* by *Acts of Parliament*, he hath also all the *ordinary* Power of an *English Judge*.

He acteth in a double Capacity, as *Judge in the Superior Courts*, and as *Justice of Assize*: And therefore, if he doth his Duty, he hath less Recess than most other Officers, and ought, for his important Services, to be paid liberally, not grudgingly; that knowing Men might be induced to depart from their Bar Business, and to become Judges in their Vigour. — I say in their Vigour, because Judges should be Persons, who need not, for bodily Infirmities, to be constantly or generally excused, from going Circuits: For it is truly a Grievance, where-ever the weighty Business of a *Judge of Assize* is thrown upon a *Barrister*, who meets his Clients every where, or which is worse, upon a Person who for want of Clients may
probably

probably need that Experience, which is only to be had from Practice; yet one or other of these will likely be the Case, when the Work of a *Judge of Assize* falls upon a Person not an *established Judge*.

The Power of a *Judge* over the Life, Liberty and Property of the Subject is so great, that he should be, if it were possible, *Faultless and infallible*. At least, he should be chosen for those Virtues and Perfections, which may be, but indeed too rarely, found amongst Men.

He should be *Upright*; that he may be clear of all Corruption, and that his Decisions may be impartial.—*LEARNED*; that his Judgments may be legal and just.—*PATIENT*; that all Sides may be heard out, and *Justice* may not be *denied*.—*DILIGENT*; that *Justice* may not be *delayed*.—*GRAVE and RESERVED*; that bold and forward Men may be awed from intruding into too great Familiarity, or entering into unbecoming Conversation; and that all due Respect may be preserved for his Person and Commission.—*COURTEOUS*; that his Gravity and Reservedness may appear to be Effects of Wisdom, not of Pride or Sullenness; and that Men may see Punishment to be the Act of the Law, for Reformation; not resent it, as the Effect of Rudeness or Severity in the Judge, for Gratification of Passion: That Men be civilized as well as corrected; and the *Judge* act the Part of a *Minister of Law*, and of a *Philosopher* at one and the same Time.-----And *RESOLUTE*; that his Virtue may never yield to Fear; but be supported under the most *furious Menaces of the worst Tyrants*.

He should also be a known *Admirer of the Constitution*, and a *Respecter* particularly, to a Degree of Adoration, of the *Power of Juries*: He should be content with his Province to be *Judge of Law*, and

leave *Facts* to *Juries*, who come out of the Neighbourhood, and are best Judges of the Witnesses, and of local Circumstances; ever bearing in his Mind that incomparable Observation in *Busbel's Case*, (*Vaughan* 143) “ If the Judge from the Evidence, shall, by his own Judgment, first *resolve* upon any
 “ Tryal *what the Fact is*, and so knowing the *Fact*,
 “ shall then *resolve* what the *Law* is, and order the
 “ Jury penally to find accordingly, what either
 “ necessary or convenient Use can be fancied of
 “ *Juries*, or to continue Trials by them at all?”
 That Case glaring in his Eyes, may perhaps withhold a Judge from attempting to coax or frighten a Jury into a Verdict against their Consciences; and may induce him to preserve them from the *undue Influence of the Bench*, as much as from any without the Bar. He should also be as careful that all *legal Evidence should be laid before a Jury*, as that, that which is improper should be kept from them, and should have *that within him*, which would direct him for his own Honour and the publick Utility, without *scaring him with stuffed Skins of strangled Judges*; or with *Swords pendant by Hairs*.

The Benches of this Kingdom have been, since *James the First's Time* especially, filled indifferently by *English* and *Irish* Men for Judges.

The Capacities of the Natives having been previously well known, the Considerations of their Creation have been quickly conjectured. When *Prostitution*, not *Integrity*; *Cunning*, not *Parts*; *Intriguing*, not *Knowledge*; *Treachery to Country and Friends*, not *Gratitude* or any *moral Virtue*, have raised a Man to the Cushion, the Ends of his Preferment have been forthwith pointed at, and Men have not been often mistaken.

The

The mean Jobber off the Bench, hath commonly proved an infamous, corrupt Tool upon it.

Englishmen came with great Advantages; their Advancement was not envied; there was no personal Prejudice against them. Whosoever thinks fairly, allows, that filling some Offices from ENGLAND is the natural Consequence of *that*, being the Residence of the SOVEREIGN, and is but a decent Return for the Protection she giveth to this Island; and that it would be ungrateful in Persons, whose Ancestors came hither, to make or to improve their Fortunes, to murmur at others, who succeed, to serve the same Turn: Men of this Cast of Mind conceive, from the *Established Character of the Country*, the highest Opinion of their Generosity, Good-nature, Courage, Integrity and Adherence to *Magna Charta*. All that they expect in return is, that the new Comers will cordially look upon GREAT BRITAIN and IRELAND as having but one Interest, and that they will propagate that Opinion universally, by Discourse and by private Correspondence; that they will be hearty Lovers of that Country which receives them with open Arms, and maintains them comfortably; that they will encourage her UNIVERSITY, by favouring Arts and Sciences, and by countenancing Learned Men, who receive their Education there; that they will help to Maintain her Poor, by using and recommending her Manufactures; and that they WILL NOT BE OF A FACTION, AGAINST HER INTEREST AND LIBERTY.

Men have never been more Honoured, than those who have not disappointed these sanguine Hopes and Expectations: But the Country hath indeed not spared its Contempt for Persons, who have fallen short of the generous Conduct, usually proceeding from the natural Principles of *Englishmen*: Hence hath some-

times arisen Discord; for Contempt is ever repaid by mortal Hatred and fell Revenge.

Judges bere hold their Places during Pleasure; and I doubt whether Judges would have proved better for holding their Offices during good Behaviour. Conscientious Men will not prostitute their Characters for any Consideration; and if they are not such, Means will be found, by additional Sallaries, or by hope of Promotion, to render them dependant and tractable. Nothing will secure a Man against Corruption, but inbred Virtue; or PRIDE, which hath sometimes done as well.

For an Instance take the following Story. "There was a Judge in GOOD KING ALFRED's Days, who had been a *faithful* and *skilful* Advocate, but a most *supple* Tool to Ministers, and capable of the lowest Drudgery out of his Profession, to advance himself in it. When he became a Judge, no Man ever discharged the Office with more *Dignity*, *Ability*, or *Uprightness*. He was Loved and Revered, but off the Bench, and in the Cabinet, he was Intriguing, Mean and Servile: His Knowledge in the Laws, which, upon the Bench, was his Glory, being ever employed in supporting *Liberty*, in guarding *Property*, and in protecting *Innocence*; was, off the Bench, his *Disgrace*; being there applied to the Service of *Ministers*, to deceive the KING, to mislead his COUNSELLORS, and to circumvent GOOD MEN.

It happened, that an EAST-ANGLIAN, incapable to get his Bread at Home, took it in his Head to travel to WESSEX, in search of Fortune. He carried with him *Certificates* of his being bred a *Lawyer*; for he had been an *Apprentice* to a BAILIFF OF A MANOR; and thus falling amongst a polite People, who ever believed what Strangers said of themselves, he passed for a Lawyer, and obtained a
Cousin

Cousin of the Judge in Marriage. The Judge, to make the most of him, committed him to the Care of his Clerk, to teach him the *Terms of Law*; and sometimes carried him *Circuits*, made him take his *Charges* in Short-hand, and copy the *Rules of his Court-Book*.

The Judge, growing weary of the Bench, as a *Clog upon his Politicks*, pretended Bodily Infirmities, and resigned; but before his Resignation, easily prevailed with the Minister, *whose Creature he was*, to secure the Succession to his BOOBY-COUSIN, who had as much Ignorance, as the other had Knowledge; who was as Contemptible, as the other was Respectable, and had indeed as little Integrity, but less Cunning to conceal his lack of it; which want of Cunning for some Time made him pass for an *undesigning Man, with a good Mind but a weak Head*.

At length his *Ignorance*, and his *Partiality*, were too notorious to be longer borne, and the Cries of the People reached the Ears of the GOOD KING, in spite of the Endeavours of Ministers to intercept them, and brought on an Enquiry, which ended in the Execution of forty and four Judges in one Year; but in the Exaltation of the *few*, who were found *able and upright*, to the highest Honours.

The JUDGE who had resigned, but to be more about Court, and who had embroiled the Court, to procure for himself a Place of more Honour and Profit, than he had before, was most justly degraded, and banished for Life.

PRIDE was this Man's *Guardian in Publick*, and did the Office of Virtue. If *Virtue* had been his *Director* before many, she would have been his *Guide* also before few. If *Love of Justice* had been his governing Principle, when all Men admired his Decrees, he would have eternalized his Name, by nominating

minating a Successor, as near himself in Value as possible; for, *his Equal was hardly to be had.*

I would not be understood, by saying, “ that I doubted, whether Judges would have proved better, for holding their Offices, during good Behaviour,” as if I were of Opinion, that our Constitution would not be mended, by making that Alteration, in a Judge’s Tenure of his Place; far from it: I am very sure, it would be a most profitable Change; and yet, that it would not make Men better or worse, which was all I meant to advance. It would prevent a wicked Minister, from dismissing an *upright Judge*, who would not become, at his Command, a BELKNAPP or a TRESILLIAN, and declare *the King to be above Law*; or a JEFFRIES, and coolly and deliberately *commit Murder*; or a SCROGGS, and *discharge a Grandjury*, for observing religiously their Oaths, and paying due Respect to the Law; and for fixing in his Place, some *ignorant, pliant Tool*, or some *knowing, corrupt Wretch*, who would be ready to call the BIBLE, a *Libel*; and MAGNA CHARTA, the Fruit of Sedition and Rebellion, an Invasion of the Prerogative, and a Subversion of the Constitution; of which sort, there is always *great Store in the Train of an ambitious Man, aspiring to Power, upon the Ruins of Liberty; who will receive all, who are willing to enlist in his Service.*

Judge POWEL, who, upon the Trial of the seven Bishops, boldly declared, “ that, to make a Writing a Libel, it must be False, it must be Malicious, and it must tend to Sedition, and— that the King could not dispence with the Laws; for then there would be no need of Parliaments, he having ingrossed in himself the whole Legislature,” did not need an Act of Indemnity, to make him good. He who opposed KING JAMES, then in the Neighbourhood, at the Head of a powerful Army,

Army, in his most favourite Points; to wit, “to
 “affright the Subjects from Petitioning against any
 “Thing he should do, or order to be done, and
 “-----to establish a Power in himself above all
 “Law,” had a Strength within him, that could not
 be overcome by Fear or Hope.

What Advantage could the famous *Chief Justice*
HOLT, receive from the *English* Law, “that Judges
 “should hold their Places, *quam diu se bene gesserint*,
 “and have Salaries established,” when he firmly
 opposed the Proceedings of the *Commons*, in the Case
 of the *AILESURY* Men. He knew, he exposed
 himself to the Resentment of *one of the Bodies*, that
 might by *Addresses*, notwithstanding the former *Pro-*
vision, have him removed: But his Integrity was above
 all Apprehensions, and it supported him in all his
 Actions.

It was the Comfort of every honest Man in Ireland,
 in the four last Years, when Faction took such Strides,
 that THAT COURT, which is more especially the
 Guardian of the Life and Liberty of the Subject, hap-
 pened to be filled with Men, whose Spirits could not
 be awed; whose Principles could not be corrupted;
 whose Stedfastness to the Constitution had been often
 proved; whose Loyalty was clear and undoubted;
 whose Property interested them deeply in the Welfare
 of the Kingdom; whose Experience gave them suf-
 ficient Insight into Men and Things; and whose
 Knowledge secured them from being imposed upon.
 Such a Court, *et Præsidium et dulce Decus nostrum*,
 made the Lovers of Liberty despise the vain Threats
 of SLAVES; and laugh at their foul Misrepresenta-
 tions, though propagated by Beat of Drum. A severer
 Reflection, or a bitterer Censure could not fall upon
 the then Administration, than that Report which
 prevailed, “that the Judges of that Court were to
 “be all turned out.” Whether this Report, issued
 from

from the Threats of the Ministers, or from the Surmises of their Followers, was alike: It was full of Disgrace to the Ministers, and of Honour to the Judges. For it signified, that *somewhat was machinated, which required other Persons to execute*---Blessed be God, Liberty and they have outlived that gloomy Season; long may they subsist together, and may Liberty never want such Guardians, who will be *Friends to the HANOVER SUCCESSION*; because *that is the most glorious Monument of the Rights of the People, and the grand Support of Liberty.*

But Ministers, who look for despotic Sway; who want to crush the natural Interest of a Country, and to trample upon all its Rights; who despair of all Means to effect their Schemes, but what arise from Power; and require *the Law to speak their Language*, will not depend upon such *Expounders*: They will find out Men, *inordinately Ambitious*; or *dissolute in their Morals*, and *desperate in Circumstances*; or *Ignorant, Conceited and Passionate.*

The AMBITIOUS MAN, if he had Parts or Learning, will not be so compleat a Tool in public Action, as in *private Council*. He will rely, more than the others, upon himself, for his Advancement; and therefore will shew a Delicacy in the Manner of discharging himself in open Light; and for his own Ends, will preserve a Character of Ability, and will throw out some *Scruples* in his Conduct, *not unlike Conscience*: But in private Council, he will be totally off his Guard; there being no need of wearing a Mask amongst Persons, who know the Face it Covers; and in public, when he can save Appearances, he will by all gentle Methods, as surely do the Business of the Faction: By Mitigation of Punishments; by Delay of Justice; by remitting of Offences; and by various Civilities applied according to the Genius of the Subject.

The

The DISSOLUTE MAN, whose Head ever over-heated by Debauchery, and whose *narrow Means* rush him into all abandoned Measures; and the IGNORANT MAN, well propt by Conceit and Passion, will make rare Instruments for a wicked Minister. Their Hopes will be in their Patron; the advancing his Interest, and encreasing his Strength will be their sole View; they will be humbly content to make him the Centre, to which, by natural Laws of Gravity, they will ever incline.

If there be a superior Merit, with respect to the Patron, in either of these Tools, it will not be easy to discover it. For *Ignorance* will blind the Actor, and prevent him, if he hath any natural Seeds of Generosity or Charity, from seeing the mischievous, the fatal Tendency of the Action he is put upon; and when he is engaged, his Conceit and Passion will push him forward, without Reflection or Remorse, to the most unwarrantable and desperate Conclusions.

The *debauched, necessitous* Man, having worn out all Marks of Modesty, will be hardened against the Scoffs, Revilings and Censures of the World: His depraved Appetite will require perpetual Supplies, and Poverty will be to him, the greatest Evil, as it will deny him those Supplies, and bring upon him Contempt, the certain Attendant of a POOR DEBAUCHEE.

Indeed an *Ignorant Tool* hath clearly an Advantage over others, insomuch as his Malignancy shall be longer concealed. When Parts or Learning are attended by Corruption, it is quickly detected and exposed; he that hath it, having no Subterfuge, to escape by; but it will be some Time, before an *Ignorant* Man will be confirmed, in publick Opinion, a ROGUE. Friends he will have some, and they will

will pity him ; and to say the Truth, most are inclined, where there is any Colour for it, to impute bad Actions, rather to a weak Head, than to a wicked Heart-----Not indeed that it matters to the Publick, whether its remediless Misfortune proceeds from a KNAVE or a BLOCKHEAD.

But though such Judges may differ in some Particulars, in this they will agree ; *that they will proceed in their several Capacities, to advance the Interest of their Faction, by every Method in their Power.*

HIGH-CHURCH will be favoured, and PREROGATIVE extended : For they know that *High-Churchmen will ever promote arbitrary Power ; and they hope Prerogative will be entrusted in their Friends Hands, who will be sure, to make Use of every Bit of it, STRAFFORD*, the infamous Author of these infernal Maxims, “ That neither Law or Lawyers should “ dispute his Orders ; and, that an Act of State “ should be equal to an Act of Parliament ; ” shall be impudently held forth by them, upon the most solemn Occasions, as a worthy Example for *Governors and Judges, who ought to act upon sound REVOLUTION PRINCIPLES*, and as a Pattern of Moderation, and publick Spirit : And it will be no Wonder, if such Judges shall, after such Pranks, dare to give it out for an Article of *Orthodox Politicks*, THAT TYRANTS ARE THE BEST GUARDIANS OF A FREE CONSTITUTION.

TRIALS AT BAR, that were ever looked upon to be the most solemn, and therefore the best Remedies against Oppression of Judges, or Partiality of Juries, will by the Ignorance, Positiveness or Corruption of such Tools, become less secure than Trials in *Manor-Courts* ; and Juries, the *Judges of Fact*, and the Glory of the Constitution, will be rendered useless, by the arbitrary Direction of such *Judges of Law*,
who

who will have both *Law and Fact bow and bend to the Convenience of a Faction.*

Even the ESTABLISHED CUSTOMS OF COURTS, Customs established to preserve Order and to prevent Confusion, will be perverted to serve the same iniquitous Purposes; and Confusion will be introduced under a *Title and Pretence of preserving Order.*-----Thus that Privilege vested in the Court, to call upon the Barristers, according to their Seniority, shall be abused; by making Use of it, only to prevent the elder Advocates from rising, until they are called upon; and by giving the Preference to *forward Favourites*, infinitely beneath the others in Standing and in every Quality requisite to make a sufficient Advocate: And then will the most worthy be postponed, and stripp'd of the Right, which they have by Custom, and by Place; and be cruelly denied the Use of those Means, which Nature and hard Study have furnished them with, of providing for themselves and their Families; and the SUITORS will also be deprived of the Assistance of Men of the greatest Abilities, merely to put them under the Necessity of employing *empty, petulant Tools of Faction*, who only shall have the Countenance of the Court.

But the full Swing of *such Judges* will be upon Circuits, in the Country-----There they will open the several Scenes with CHARGES, that shall be *malicious and false Libels* against the Constitution and the Defenders of it: In which *Religion* will be profaned; *Law* perverted, misquoted or misconstrued; *Magna Charta* ridiculed and made light of; the *King* dishonoured; the *affectionate Father of the People* misrepresented as a *cruel Tyrant*; and his best Subjects defamed and abused-----Then will *Officers* tremble; *Culprits* will be affrighted and despair; *Justices of the Peace* will be fined, if they do not, and will be insulted, if they do appear; *Juries* will be bullied and maltreated;

unaffected, and the Spectators will not dare to alter
the *Arrangement of their Majesties*, however extra-
ordinarily provoked, lest they may *disturb the Dock*; Lawyers
will be obliged rather to *manoeuvre their Clients*, than
to the Judge's Way of Thinking; than to vindicate
their *Causes*; and Attorneys will be puzzled what
to do with their *Business*; but at length will often
desolve, though at present great Cost, yet to prevent
certain Ruin, to withdraw Records: *Unwarrantable*
Presentments for Friends will be recommended and
promoted; and *Traverses* will be encouraged or de-
fected; and *necessary* *Presentments* discouraged
and rejected, because they arise from Popular Men,
Extrajudicial and *illegal Opinions* will be delivered in
private Companies, to forward Faction, to increase
Discord, and to put Virtue out of Countenance; and
in the End, *Reports will be made to the Government* of
Men and Things, to reflect upon the Friends of the
Country, and to celebrate and exalt the Enemies
thereof, and to delude the Government by a false
Opinion, *that the Faction is rejected, when it is well*
known; **THAT IT IS THE SPORT OR DE-**
TESTATION OF EVERY HONEST MAN
ALIVE

A FREE CITIZEN.



F I N I S

